

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:	)	
	)	
THE FINANCIAL OVERSIGHT AND	)	PROMESA
MANAGEMENT BOARD FOR PUERTO RICO,	)	Title III
	)	
as representative of	)	Case No. 3:17-bk-03283 (LTS)
	)	
THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> ,	)	
	)	
Debtors.	)	
	)	
In re:	X	
	)	
THE FINANCIAL OVERSIGHT AND	)	PROMESA
MANAGEMENT BOARD FOR PUERTO RICO	)	Title III
	)	
as representative of	)	Case No. 3:17-cv-01685 (LTS)
	)	Case No. 3:17-bk-03566 (LTS)
	)	
THE EMPLOYEES RETIREMENT SYSTEM OF THE	)	
GOVERNMENT OF THE COMMONWEALTH OF	)	
PUERTO RICO,	)	
	)	
Debtor.	)	
	)	
	X	

**URGENT MOTION REGARDING THE SCHEDULING OF  
DISCOVERY AND BRIEFING IN CONNECTION WITH  
THE MOTION OF CERTAIN SECURED CREDITORS OF  
THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT  
OF THE COMMONWEALTH OF PUERTO RICO  
FOR RELIEF FROM THE AUTOMATIC STAY**

To the Honorable United States District Court Judge Laura Taylor Swain:

Movants<sup>1</sup> respectfully submit this urgent motion (the “Urgent Motion”) regarding the scheduling of discovery and briefing in connection with the *Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Relief from the Automatic Stay* [Docket No. 3418 in Case No. 17-bk-03283 and Docket No. 289 in Case No. 17-bk-03566] (the “Stay Relief Motion”). In support of the Urgent Motion, Movants state as follows:

### **BACKGROUND**

1. On February 21, 2019, Movants filed the *Urgent Motion to Expedite Consideration of Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Relief from the Automatic Stay* [Docket No. 5196 in Case No. 17-bk-03283 and Docket No. 367 in Case No. 17-bk-03566].

2. On February 25, 2019, the Court entered its *Order Granting Urgent Motion to Expedite Consideration of Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Relief from the Automatic Stay* [Docket No. 5210 in Case No. 17-bk-03283 and Docket No. 371 in Case No. 17-bk-03566]. The

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<sup>1</sup> Movants include Andalusian Global Designated Activity Company, Glendon Opportunities Fund, L.P., Mason Capital Master Fund, LP, Oaktree-Forrest Multi-Strategy, LLC (Series B), Oaktree Opportunities Fund IX, L.P., Oaktree Opportunities Fund IX (Parallel 2), L.P., Oaktree Value Opportunities Fund, L.P., Ocher Rose, L.L.C., Puerto Rico AAA Portfolio Bond Fund, Inc., Puerto Rico AAA Portfolio Bond Fund II, Inc., Puerto Rico AAA Portfolio Target Maturity Fund, Inc., Puerto Rico Fixed Income Fund, Inc., Puerto Rico Fixed Income Fund II, Inc., Puerto Rico Fixed Income Fund III, Inc., Puerto Rico Fixed Income Fund IV, Inc., Puerto Rico Fixed Income Fund V, Inc., Puerto Rico GNMA & U.S. Government Target Maturity Fund, Inc., Puerto Rico Investors Bond Fund I, Puerto Rico Investors Tax-Free Fund, Inc., Puerto Rico Investors Tax-Free Fund, Inc. II, Puerto Rico Investors Tax-Free Fund III, Inc., Puerto Rico Investors Tax-Free Fund IV, Inc., Puerto Rico Investors Tax-Free Fund V, Inc., Puerto Rico Investors Tax-Free Fund VI, Inc., Puerto Rico Mortgage-Backed & U.S. Government Securities Fund, Inc., SV Credit, L.P., Tax-Free Puerto Rico Fund, Inc., Tax-Free Puerto Rico Fund II, Inc., and Tax-Free Puerto Rico Target Maturity Fund, Inc.

Court set a schedule for discovery and supplemental briefing, with a final hearing on the Stay Relief Motion on March 22, 2019.

3. On March 8, 2019, Movants and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), by and through the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), and the Financial Oversight and Management Board (the “Oversight Board”) (collectively, the “Parties”) filed a *Joint Informative Motion Regarding Consensual Extension of Deadlines for Debtor and Movants to Serve Responses and Objections to Requests for Admission and Interrogatories* [Docket No. 5453 in Case No. 17-bk-03283 and Docket No. 380 in Case No. 17-bk-03566], in which the Parties informed the Court of their intention to propose a revised discovery and briefing schedule for the Stay Relief Motion. The Parties further informed the Court that they would submit a joint proposed schedule if possible, or would otherwise submit alternative proposals, no later than Tuesday, March 12, 2019.

4. On March 12, 2019, the Parties filed a *Joint Informative Motion Regarding the Scheduling of Discovery and Briefing in Connection With the Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Relief from the Automatic Stay* [Docket No. 5599 in Case No. 17-bk-03283 and Docket No. 387 in Case No. 17-bk-03566], in which the Parties advised the Court that they needed additional time to confer on a revised proposed schedule. The Parties informed the Court that they would submit a joint proposed schedule if possible, or would otherwise submit alternative proposals, no later than Thursday, March 14, 2019.

5. Since March 12, 2019, the Parties have continued to confer by telephone and email concerning a proposed schedule, but have been unable to reach an agreement.

### **ARGUMENT**

6. The Parties are in agreement that the March 22, 2019, hearing date should be extended to permit for the resolution of certain discovery disputes. Specifically, although the parties have made progress in resolving their discovery disputes, they anticipate two rounds of briefing and argument on motions to compel before Magistrate Judge Judith Dein.

7. *First*, the Parties intend to file motions to compel to clarify and define their discovery obligations. The debtors have argued that Movants are not entitled to relief from the automatic stay because of Joint Resolution 188 and Act 106-2017. *See, e.g., Debtor's Opposition to Motion of Certain Secured Claimholders of Employees Retirement System of Government of Commonwealth of Puerto Rico for Relief from Automatic Stay* at 12 [Docket No. 3465 in Case No. 17-bk-03283 and Docket No. 292 in Case No. 17-bk-03566] (The automatic stay is “not at issue” because “Movants are complaining about legislation by the Commonwealth creating a new pension system that does not generate Employers’ Contributions.”). Movants have therefore served discovery on ERS, the Commonwealth, AAFAF, and the Oversight Board in connection with that legislation, and Movants have received numerous objections to the scope of those requests. ERS has also served broad discovery requests on Movants, raising issues that Movants believe are wholly irrelevant to the Stay Relief Motion.

8. *Second*, ERS, the Commonwealth, and AAFAF have interposed sweeping objections to Movants’ discovery requests based on extensive claims of privilege. Movants intend to challenge the validity of those objections, but given their breadth, it is apparent that the debtors will not produce a significant amount of discovery until the privilege disputes are resolved.

9. The revised schedules proposed by the Parties both incorporate time for the resolution of the foregoing motions. However, they differ in other respects that have prevented the

parties from reaching agreement. The Oversight Board proposes extending the date for the final hearing to May 21, 2019, while Movants believe that the hearing can be held earlier, on May 6, 2019.

10. There are several reasons for the 15-day gap in the two schedules. First, the schedule Movants propose would advance the dates for resolution of privilege claims, cutting the schedule by one week without shortening the time for debtors to comply with any orders Judge Dein may enter requiring the production of additional documents. Second, Movants' proposed schedule would shorten the period of time between the completion of depositions and the making of supplemental filings from six days to two, and it would keep the same relative timing of the remaining pre-hearing submissions that the current schedule has. Together, these two measures reduce the time to hearing by another five days.<sup>2</sup> Other efficiencies are realized in Movants' proposed schedule by avoiding the delays that would be occasioned by the Easter and Passover holidays and by arranging for certain deadlines to not fall on weekends.

11. Because it eliminates these unnecessary gaps, Movants' proposed schedule would permit the hearing to go forward on May 6, 2019. Movants' schedule is also appropriate given the relevant statutory commands. Under § 362(e)(1), a court "must hold a preliminary hearing on a motion to lift the stay within thirty days from the date the motion is filed, or the stay will be considered lifted. A final hearing must be commenced within thirty days after the preliminary hearing." *Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 31 (1st Cir. 1994). Movants sought relief from the automatic stay *more than eight months ago* on the basis that the Commonwealth was diverting and dissipating their collateral without providing constitutionally required adequate

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<sup>2</sup> This would not result in the truncation of the period for taking depositions. The period for taking depositions could begin as soon as documents are produced later this month, and would run through the end of April.

protection payments. The First Circuit has made clear that § 362 of the Bankruptcy Code “requires [a court’s] action to be quick” on such motions. *Id.* Given the time that already has elapsed and the harm Movants face with each passing day, Movants do not consent to delaying the final hearing beyond May 6, 2019. *See In re Daly*, 167 B.R. 734, 736 (Bankr. D. Mass. 1994) (“On a motion for relief from the automatic stay, the Court is not free to continue the evidentiary hearing and to postpone a decision on the motion. The Court must honor the movant’s right to disposition of the motion within the time limits set forth in 11 U.S.C. § 362(e).”).

### **RELIEF REQUESTED**

12. Movants request that the Court enter an order scheduling the final hearing on the Stay Relief Motion for May 6, 2019. Movants propose the following schedule for discovery and supplemental briefing:

- a. March 15, 2019: Deadline for completion of exchange of documents and exchange of privilege logs for non-ESI discovery.
- b. March 18, 2019: Meet-and-confer on outstanding discovery issues.
- c. March 21, 2019: Deadline for motions to compel on the scope of discovery.
- d. March 25, 2019: Deadline for oppositions to motions to compel.
- e. March 27, 2019: Deadline for replies in support of motions to compel.
- f. March 29, 2019: Hearing on motions to compel.
- g. April 5, 2019: Deadline for service of supplemental privilege logs (if so ordered by Magistrate Judge Judith Dein).
- h. April 8, 2019: Meet-and-confer on matters involving claims of privilege.
- i. April 9, 2019: Deadline for motions to compel on remaining discovery issues, including privilege.

- j. April 10, 2019: Deadline for completion of supplemental document productions, including ESI discovery and any discovery ordered by Magistrate Judge Judith Dein.
- k. April 12, 2019: Deadline for oppositions to motions to compel.
- l. April 16, 2019: Deadline for replies in support of motions to compel.
- m. April 18, 2019: Hearing on motions to compel.
- n. April 24, 2019: Deadline for completion of additional document productions and service of supplemental privilege logs (if so ordered by Magistrate Judge Judith Dein).
- o. April 28, 2019: Deadline for completion of depositions.
- p. April 30, 2019: Deadline for any supplemental briefs and declarations in support of supplemental briefs.
- q. May 2, 2019: Deadline for each party to file a list of declarations and exhibits it plans to introduce as its principal case.
- r. May 2, 2019: Deadline for reply briefs, objections to declarations and exhibits, and designation of witnesses for cross-examination, including anticipated timing and topics.
- s. May 3, 2019: Deadline for filing of compilations of listed declarations and exhibits and providing of copies to Judge Swain in New York.
- t. May 6, 2019: Final Hearing with respect to the Stay Relief Motion (New York).

13. Pursuant to Paragraph I.H of the *Eighth Amended Notice, Case Management and Administrative Procedures* [Docket No. 4866 in Case No. 17-bk-03283], Movants hereby certify

that they have made reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court. Movants have been informed that the Oversight Board will also file a motion with an alternative schedule for discovery and briefing.

**WHEREFORE** Movants respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, (a) granting the Urgent Motion and (b) granting such other relief as is just and proper.



In San Juan, Puerto Rico, today March 14, 2019.

By:

/s/ Alfredo Fernández-Martínez

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**Exhibit A**

**Proposed Order**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:	)	
	)	
	)	PROMESA
THE FINANCIAL OVERSIGHT AND	)	Title III
MANAGEMENT BOARD FOR PUERTO RICO,	)	
as representative of	)	Case No. 3:17-bk-03283 (LTS)
	)	
THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> ,	)	
Debtors.	)	
	)	
	X	
In re:	)	
	)	
	)	PROMESA
THE FINANCIAL OVERSIGHT AND	)	Title III
MANAGEMENT BOARD FOR PUERTO RICO,	)	
as representative of	)	Case No. 3:17-cv-01685 (LTS)
	)	Case No. 3:17-bk-03566 (LTS)
	)	
THE EMPLOYEES RETIREMENT SYSTEM OF THE	)	
GOVERNMENT OF THE COMMONWEALTH OF	)	
PUERTO RICO,	)	
Debtor.	)	
	)	
	X	

**ORDER GRANTING URGENT MOTION REGARDING THE SCHEDULING OF  
DISCOVERY AND BRIEFING IN CONNECTION WITH  
THE MOTION OF CERTAIN SECURED CREDITORS OF  
THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT  
OF THE COMMONWEALTH OF PUERTO RICO  
FOR RELIEF FROM THE AUTOMATIC STAY**

Upon consideration of the *Urgent Motion Regarding the Scheduling of Discovery and Briefing in Connection with the Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Relief from the Automatic Stay* (the “Urgent Motion”)<sup>1</sup> filed by Movants<sup>2</sup>; the Court having reviewed the Urgent Motion and the relief requested; the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 48 U.S.C. § 2166(a); the Court determining that venue of this proceeding and the Urgent Motion in this District is proper under 28 U.S.C. § 1391(b) and 48 U.S.C. § 2167(a); notice of the Urgent Motion being adequate and proper under the circumstances; and after due deliberation and sufficient cause appearing; therefore, it is hereby ORDERED that:

1. The Urgent Motion is GRANTED as set forth herein.
2. The following schedule shall apply for consideration of the Stay Relief Motion:
  - a. March 15, 2019: Deadline for completion of exchange of documents and exchange of privilege logs for non-ESI discovery.
  - b. March 18, 2019: Meet-and-confer on outstanding discovery issues.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the respective meanings given to them in the Urgent Motion.

<sup>2</sup> Movants include Andalusian Global Designated Activity Company, Glendon Opportunities Fund, L.P., Mason Capital Master Fund, LP, Oaktree-Forrest Multi-Strategy, LLC (Series B), Oaktree Opportunities Fund IX, L.P., Oaktree Opportunities Fund IX (Parallel 2), L.P., Oaktree Value Opportunities Fund, L.P., Ocher Rose, L.L.C., Puerto Rico AAA Portfolio Bond Fund, Inc., Puerto Rico AAA Portfolio Bond Fund II, Inc., Puerto Rico AAA Portfolio Target Maturity Fund, Inc., Puerto Rico Fixed Income Fund, Inc., Puerto Rico Fixed Income Fund II, Inc., Puerto Rico Fixed Income Fund III, Inc., Puerto Rico Fixed Income Fund IV, Inc., Puerto Rico Fixed Income Fund V, Inc., Puerto Rico GNMA & U.S. Government Target Maturity Fund, Inc., Puerto Rico Investors Bond Fund I, Puerto Rico Investors Tax-Free Fund, Inc., Puerto Rico Investors Tax-Free Fund, Inc. II, Puerto Rico Investors Tax-Free Fund III, Inc., Puerto Rico Investors Tax-Free Fund IV, Inc., Puerto Rico Investors Tax-Free Fund V, Inc., Puerto Rico Investors Tax-Free Fund VI, Inc., Puerto Rico Mortgage-Backed & U.S. Government Securities Fund, Inc., SV Credit, L.P., Tax-Free Puerto Rico Fund, Inc., Tax-Free Puerto Rico Fund II, Inc., and Tax-Free Puerto Rico Target Maturity Fund, Inc.

- c. March 21, 2019: Deadline for motions to compel on the scope of discovery.
- d. March 25, 2019: Deadline for oppositions to motions to compel.
- e. March 27, 2019: Deadline for replies in support of motions to compel.
- f. March 29, 2019: Hearing on motions to compel.
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- q. May 2, 2019: Deadline for each party to file a list of declarations and exhibits it plans to introduce as its principal case.

- r. May 2, 2019: Deadline for reply briefs, objections to declarations and exhibits, and designation of witnesses for cross- examination, including anticipated timing and topics.
- s. May 3, 2019: Deadline for filing of compilations of listed declarations and exhibits and providing of copies to Judge Swain in New York.
- t. May 6, 2019: Final Hearing with respect to the Stay Relief Motion (New York).

3. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this order.

Dated: \_\_\_\_\_  
San Juan, Puerto Rico

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE